

MEMORANDUM

TO: Carol Kowalski, AICP
Laura Wiener, AICP

FROM: Judi Barrett, Director of Municipal Services

DATE: July 22, 2014

SUBJECT: Zoning Assessment

As part of our work on the Master Plan, we agreed to provide the Town with a zoning diagnostic: an analysis of the Zoning Bylaw (ZBL) for clarity, internal consistency, format and structure, consistency with the Zoning Act and current case law, general ease of use, and relationship to the stated goals of the new Master Plan. The attached technical memorandum presents our assessment of Arlington's ZBL. We discussed portions of this assessment in the Land Use Working Paper, which we submitted to you and the Master Plan Advisory Committee (MPAC) on December 31, 2013. Thus, some of the content of this memo will be familiar to you and the MPAC, and some of the content is new.

Massachusetts cities and towns have three primary land use management tools for regulating growth and change. They include: (1) the master plan or comprehensive plan, (2) zoning, and (3) subdivision control. Arlington is scheduled to complete the new Master Plan this year, so a zoning review is timely. In order to implement the Master Plan, Arlington will need to update and revise the ZBL. In its present form, the ZBL does not prescribe a vision of the Town that matches the goals adopted by the MPAC. The existing ZBL has all of the traits of a frequently amended bylaw that is nevertheless fashioned around an antiquated framework. This "quilted" approach has resulted in a bylaw that is in many ways disjointed and confusing, and may be vulnerable to legal challenge.

The ZBL may have served Arlington well in the past, but it has become evident that deficiencies exist and improvements need to be made. The ZBL was originally adopted in the 1920s and since then, Town Meeting has periodically amended it. As with any other zoning bylaw we have reviewed for other towns, Arlington's ZBL accumulated some inconsistencies and duplication as it was amended over time. It also has provisions that

may have been acceptable in the past but are not consistent with the Zoning Act, G.L. c. 40A, or current case law.

In situations like this, the most appropriate way to proceed is a two-step zoning revision process: recodification first, and second, comprehensive zoning (and map) amendments to implement the policy objectives of the master plan. It is always tempting to take on the latter as a first order of business because town boards, the general public, and certainly property owners and developers find policy changes more interesting. However, adding new tools to a deficient foundation is a prescription for problems. Communities invariably confront this when they begin the recodification process and find out that fixing basic wording problems can be far more complicated than they expected.

For budgetary purposes, we believe the Town should appropriate \$35,000 to \$40,000 in FY 2016 to recodify the ZBL. Since recodification involves no major policy changes, it does not have to be designed or conducted as a “meeting-intensive” project. Recodification is typically done by a consultant working with a committee or group of “expert” advisors, periodic work sessions with the Arlington Redevelopment Board, the Board of Appeals, and staff, and perhaps with two or three significant progress meetings for the general public. Unless there are map errors that have never been identified, recodification is typically a six- to nine-month endeavor. Any consultant embarking on a recodification assignment will conduct an independent diagnostic, but this memo may be helpful to the consultant the Town decides to hire.



A. FINDINGS

- In its present form, the Arlington Zoning Bylaw (ZBL) is difficult to navigate and often difficult to interpret.
- There is an immediate need to reorganize and reformat the ZBL so that its requirements are easier for the public, town boards, staff, and applicants and their representatives to understand. Additional and better illustrations would help everyone.
- The ZBL should be reorganized and reformatted to clarify and make obvious the procedures for site plans, Environmental Design Review, special permits, variances, appeals, rezoning, and so forth.
- As written, the ZBL will not be able to implement key goals of the new Master Plan.
- Setbacks and other dimensional and design standards should be adjusted to facilitate infill development. The suburban standards in the ZBL may be appropriate for lower-density residential and neighborhood business areas, but they are poorly suited for infill and mixed-use areas. In particular, the Town needs to revisit its building height regulations and may want to revisit its floor area ratio (FAR) standards. FAR has some purposes, but it is a fairly blunt tool and not effective for regulating building form.
- The Town's off-street parking regulations need to be overhauled and modernized to address current trends in land use, economic development, and transportation planning. Consideration should be given to establishing maximum instead of minimum parking requirements. Even if Arlington decides to maintain the present minimum-number-of spaces-per-unit approach, off-street parking requirements should be waived for very small business establishments and significantly reduced for upper-story offices.
- The Town should give staff authority to conduct Site Plan Review for small projects that currently trigger Environmental Design Review (EDR). This could help to improve the development review process and encourage reinvestment in older areas of the Town.
- Reliance on special permits creates uncertainty for developers and their neighbors, as well as burdensome administrative processes and expenses. It also complicates accountability in the permitting process and creates a high risk that applicants will not be treated equitably.
- The ZBL should address emerging trends in land use and development. In addition to needs for greater housing diversity and mixed use development, the ZBL should

address urban agriculture, use of alternative energy sources, and neighborhood-based businesses to ensure that these uses are provided for and compatible.

- The present definition of “family” is more accommodating than many such definitions in other communities, but it should be reviewed and considered with federal Fair Housing Act (FFHA) regulations in mind. The limitation of four unrelated individuals may work for some types of households, but it probably does not work for a majority of group homes for adults with disabilities and some types of “non-traditional” households composed of related and unrelated people. Any zoning revision process conducted today needs to be conscious of recent and proposed FFHA regulations, especially as they pertain to families and the need for reasonable accommodation of people with disabilities.

B. ZONING OVERVIEW

The Arlington Zoning Bylaw (ZBL) consists of twelve major sections:

- Article 1: Title, Authority, and Purpose, establishes the ZBL’s scope of authority (Section 1.02) and purposes (Section 1.03). The scope of authority section refers to G.L. c. 40A, the Zoning Act, but omits any reference to the Home Rule Amendment and Chapter 808 of the Acts of 1975. The Home Rule Amendment in particular should be identified in the scope of authority to clarify that the Town’s zoning is not limited (or “disabled”) by Chapter 40A.
- Article 2: Definitions, includes definitions of terms used throughout the ZBL.
- Article 3, Establishment of Districts, identifies the Town’s nineteen use districts, provides a purpose statement for each district, establishes the Zoning Map, and describes how zoning boundaries should be interpreted. The overlay districts (floodplain and inland wetlands) are not identified in Article 3.
- Article 4: Interpretation and Application, contains provisions that are typically incorporated in other sections of a ZBL. This article explains the ZBL’s relationship to other laws and regulations and its applicability to uses and structures that existed prior to adoption of the ZBL (and subsequent amendments). There is also a section that addresses mixed uses on a single lot (Section 4.04). This paragraph has relevance to a discussion later in this memorandum.
- Article 5: Use Regulations, is primarily Sec. 504, the Table of Uses. This is an 18-page display of use regulations organized by major class and some sub-classes (residential, institutional, agricultural, public/recreational, utilities/transportation, commercial, personal/business services, eating/drinking establishments, office, wholesale, light industry, and accessory uses).

- Article 6: Dimensional and Density Regulations, which consists of a Table of Dimensional and Density Regulations with table notes and several pages of text regulations as well. This section is among the more challenging sections of Arlington's ZBL, in part due to format and in part because it has been amended so many times. In order to understand what can be done with a given parcel of land, one must read both the Table and text because the text sections contain interpretation, exceptions, additional requirements, and so forth. In addition, Sec. 6.08, Large Additions in Residential Districts, has an impact on extensions or alterations on substandard lots that are otherwise governed by Article 9.
- Article 7: Signs, which contains the regulations on number and size of signs for each district in Arlington. There are sign regulations for permanent and temporary signs. This chapter of the ZBL appears to have been amended many times and needs to be overhauled. Some consideration should be given to reorganizing the material in tables.
- Article 8: Off-Street Parking and Loading Regulations, consists of a table of parking regulations, i.e., minimum required number of vehicular parking spaces per dwelling unit or per sq. ft. of use on nonresidential lots. This article also has bicycle parking standards, which is commendable for Arlington because many suburban zoning bylaws are silent on bicycle parking. In Arlington, bicycle parking requirements are triggered by Environmental Design Review (discussed later in this memo), and the number of bicycle spaces is generally a ratio to number of vehicle spaces.
- Article 9: Nonconforming Uses, Structures, and Lots tracks the provisions of G.L. c. 40A, § 6, for the continuation, expansion or alteration of uses and structures that lawfully pre-existed the effective date of the ZBL and subsequent amendments to it. This section appears to allow some types of projects that would otherwise be reviewable under Bjorkland v. Zoning Board of Appeals of Norwell (2008). We recommend that Town Counsel review Article 9 for consistency with recent case law. There have been several recent Appeals Court decisions that may have bearing on an update of Article 9.
- Article 10: Administration and Enforcement, is a fairly standard section that describes the requirements for a building permit, outlines the powers and duties of the Board of Appeals (generally in concert with G.L. c. 40A, § 12), and appeals. The Town has inserted permitting flow charts for special permits and variances at the end of Article 10.
- Article 11: Special Regulations, is a "catch-all" section for provisions that do not have a clear home elsewhere in the ZBL. Article 11 includes the Town's floodplain and wetlands district regulations, as well as Arlington's Environmental Design Review (EDR) process. EDR is a "super site plan review" special permit process that consolidates the operational, environmental, and architectural and site design

components of project review under one board, the Arlington Redevelopment Board (ARB). It applies to construction on any site bordering the Town's major roadways; construction of any residential use with six or more units; inns, hotels, motels exceeding certain size thresholds; nonresidential uses over 5,000 sq. ft. in residential districts; outdoor uses (not defined), and temporary signage at a seasonal athletic facility. It also applies to the Planned Unit Development and Multi-Use Districts, and parking facilities in the Open Space District.

Article 9 also provides Arlington's inclusionary housing requirements. Arlington 15 percent of the units in new developments and other projects subject to EDR to be affordable units eligible for the Chapter 40B Subsidized Housing Inventory (SHI).

- Article 12: Amendment, Validity, and Effective Date, is a standard section of any zoning ordinance or bylaw. It specifies the procedures for zoning amendments (consistent with G.L. c. 40A, § 5, and contains a severability clause (in the event that some portion of the ZBL is invalidated, the rest of the ZBL will still stand).

There is nothing particularly unusual about the organization of Arlington's ZBL. It needs reformatting for ease of use, and some paragraphs should be relocated. However, the ZBL's format and organization do not present as many problems as some of its substantive provisions. The following sections of this report provide a discussion of issues identified during our review. Several of these issues have been pointed out at MPAC meetings, in discussions with Town staff, or in the Land Use Working Paper (12/31/2013).

1. Format and Organization

A ZBL should be a usable reference document for the average resident. Town officials and staff, developers, attorneys, and engineers and architects need a well-organized code, but the format and organization of a ZBL should make it possible for reasonably motivated residents to find the rules that apply to their own property and the property next door. A clearly written ZBL can still be "unfriendly" to users if it is poorly organized or formatted in a way that makes it hard to find information. Techniques to make a ZBL readable to a wide variety of audiences include:

- Providing a table of contents with article numbers, section numbers, and the numbers or letters for major subsections;
- Providing an index;
- Adopting and applying a consistent numbering system and indenting each tier of a numbered outline;
- Following a consistent approach to cross-referencing;
- Citing the dates of adoption and amendment;

- Providing page layouts that include running headers, page numbering, the current date of the ZBL, and plenty of white space;
- Using tables and illustrations;
- Using bold type to signal major headings and sub-headings;
- Locating all definitions in a single section or, alternatively, listing all defined terms in a single section and for definitions located elsewhere, cross-referencing those sections so the reader knows how to find them; and
- Adopting a framework for dividing the contents of a ZBL into coherent sections.

Arlington's ZBL adheres to some of these principles. For example, the major section headings are highlighted (in bold type), pages are numbered, and the section numbering system is reasonably consistent. In most cases, amendment dates appear in appropriate (easy to find) locations as well. However, the ZBL omits some of these features, too. All of the existing formats appear in fairly dense page layouts that lack running headers. Except for Article 2, Definitions, the ZBL contains very few illustrations. Some reorganization and consolidation of sections would help to improve the ZBL. In general, the Arlington ZBL would meet the needs of a wider group of users if the document were designed for readability and ease of access.

2. Tables

Arlington uses tables to present some comparative information, such as use regulations and density and dimensional standards. Tables have some advantages. For example, a table reduces the risk of error as a ZBL is amended over time. If a use is listed in a table of use regulations as permitted in several districts and the community wants to convert it to a special permitted use in one district, the table can simply be amended by replacing "P" with "SP" in the column that applies to that district.¹ Tabular formats also make efficient use of space.

Tables can be particularly effective at conveying information if they include lines, colors, or shading, alone or in combination, as an aid to the reader. Multiple columns and rows should be delineated in some manner or the table will be difficult to interpret. Simple techniques such as shading applied to every other column, or graduated shading to depict lower to higher density, provide graphic reinforcements that can help a reader interpret standards and understand relationships between them. Arlington's existing Table of Use Regulations contains only one type of delineation: vertical (column) separators between groups of use districts. The table includes a column for each district and a total of nineteen

¹ By contrast, for an outline format that follows the traditional hierarchy of most to least restrictive districts with "nested" uses, amending a use provision in a more restrictive district could lead to unintended consequences in one of the less restrictive districts.

districts, but separators appear only between major classes of use, e.g., separating the eight residential districts from the six business districts. Due to the number of districts on each page and the very small font size required to accommodate so many districts, the absence of better visual definition makes the table difficult to read. This is an example of a simple-to-fix issue that needs little elaboration here. Suffice it to say that table design is no less important than overall page design choices to create a usable, understandable reference document.

3. Access and Ease of Use

Since experienced town officials and staff often work with the ZBL, they probably can find obscure provisions with ease. However, the resident who simply wants to understand the requirements for expanding a garage or constructing an in-ground swimming pool needs some basic navigation aids. In addition to the table of contents, an index and possibly a quick reference guide would make the ZBL more accessible not only to residents, but also newly elected or appointed town officials, developers and their consultants, and non-resident landowners.

C. POLICY FRAMEWORK

The new Master Plan promotes several goals that relate directly or indirectly to land use. It is important to acknowledge them here because they have an impact on the zoning assessment.

A zoning ordinance or bylaw should express a community's development blueprint: the "where, what, and how much" of land uses, intensity of uses, and the relationship between abutting land uses and how they relate to the roads that serve them. Ideally, one can open a ZBL and understand what the community wants to achieve. While many aspects of Arlington's ZBL are fairly straightforward, it is not always as clear as it should be due to a combination of drafting problems and organizational weaknesses. In addition, we understand that staff and officials do not always interpret the ZBL the same way. Aside from deficiencies with the existing ZBL, the new Master Plan promotes goals that Arlington will find it very difficult (if not impossible) to meet without a comprehensive zoning update. These goals include, from Land Use and other elements:

- Balance housing growth with other land uses that support residential services and amenities.
- Encourage development that enhances the quality of Arlington's natural resources and built environment.
- Attract development that supports and expands the economic, cultural, and civic purposes of Arlington's commercial areas.
- Maximize the buildout potential of commercial and industrial properties.

- Preserve and maintain Arlington's historic structures and cultural properties to leverage economic development.
- Encourage mixed-use development that includes affordable housing, primarily in well-established commercial areas.
- Provide a variety of housing options for a range of incomes, ages, family sizes, and needs.
- Ensure that Arlington's neighborhoods, commercial areas, and infrastructure are developed in harmony with natural resource concerns.

1. Use Districts

Arlington adopted its first Zoning Bylaw in 1924, but the version currently in use was adopted in 1975 and it has been amended many times since then. It divides the town into nineteen use districts (see Zoning Map), or areas zoned for residential, commercial, industrial, or other purposes. There is nothing inherently wrong with a large number of zoning districts as long as the regulations make sense "on the ground." In many cases, especially along Massachusetts Avenue, Arlington essentially zoned the land for whatever purpose existed at the time, which in turn makes for an odd arrangement of districts – and often results in very shallow, single-parcel districts. Some districts are also divided by Massachusetts Avenue, i.e., different districts on opposite sides of the road.

Table 1. Zoning Districts by Land Area					
Abbr.	District Name	Acres	Abbr.	District Name	Acres
R0	Large Lot Single Family	238.2	B1	Neighborhood Office	25.9
R1	Single Family	1,771.5	B2	Neighborhood Business	16.9
R2	Two Family	619.7	B2A	Major Business	22.2
R3	Three Family	8.3	B3	Village Business	30.2
R4	Town House	19.4	B4	Vehicular Oriented Business	30.0
R5	Apartments Low Density	63.7	B5	Central Business	10.3
R6	Apartments Med Density	49.0	I	Industrial	48.7
R7	Apartments High Density	18.7	MU	Multi-Use	18.0
OS	Open Space	275.9	T	Transportation	0.8
PUD	Planned Unit Development	16.2		Total Acres (w/out water)	3,283.6
Source: Arlington GIS. Table omits water area.					

There is also a wetlands protection (conservancy) overlay district that appears only in part on the Zoning Map. Like many towns in Massachusetts, Arlington has an Inland Wetlands District that pre-dates the adoption of G.L. c. 131, § 40, the Massachusetts Wetlands Protection Act. The Zoning Bylaw relies on a text description for some covered wetlands that are not specifically mapped, e.g., 25 feet from the centerline of rivers, brooks, and streams, despite a requirement of the state Zoning Act (Chapter 40A) that all districts be

mapped.² As part of the master plan implementation process, the Town may want to review the continued relevance of the Inland Wetlands District. Some communities have found that administering a zoned wetlands district creates conflicts or inconsistencies with the Conservation Commission's work under G.L. c. 131, § 40.

People usually think that the name of a zoning district indicates what the land can be used for, and to a point, this is true in Arlington. As suggested by the charts above, the amount of land zoned for various purposes aligns fairly well with the amount of land actually used for those purposes, but there are exceptions. For example, Arlington has less land devoted to single-family homes than the land zoned for single-family home development. This is partially because public service uses such as schools and parks often occupy land in residential neighborhoods. Curiously, the only district in which Arlington allows adult uses is the Central Business District (B5), the purpose of which is "to reinforce the Center's role as the focus of activity in Arlington..." Moreover, the bylaw has no regulations to control the location or extent of adult uses within the B5 district. This should be addressed soon.

Not much of Arlington's industrially zoned land is used for industrial purposes. While the town has zoned about 49 acres for industrial development, a comparison of the Zoning Map and assessor's records shows that only fourteen acres (about 29 percent) of the Industrial District is actually used for industrial purposes such as manufacturing, warehouse/distribution, storage, and related office facilities. One reason for these differences is that Arlington allows non-industrial uses in the industrial districts. Some of the non-industrial uses may also be "grandfathered," i.e., pre-existing nonconforming uses that were legal when created but do not comply with current zoning requirements. According to the assessor's data, the largest individual users of industrial land in Arlington are municipal (e.g., the DPW compound on Grove Street), the Gold's Gym site on Park Ave., a warehouse/storage facility on Ryder Street, and one of several auto repair facilities currently operating in Arlington. In fact, auto-related businesses account for most of the Industrial District's commercial uses: auto repair shops, gasoline station, and commercial parking. Some of these uses are likely strong candidates for redevelopment and reuse.

The six Business districts have also been developed for many uses in addition to the commercial uses for which they are principally intended. Information reported in the assessor's database shows that over half of Arlington's business-zoned land is used for some type of commercial use – retail, restaurants, offices, and so forth – but 20 percent is used for residential purposes, from scattered-site single-family homes to fairly dense apartments. Unlike its policies in the Industrial district, Arlington allows multifamily housing by special permit in most of the Business districts, and some of the apartments and townhouses located on business-zoned land came about because of this provision in

² G.L. c. 40A, § 4.

the Zoning Bylaw. Based on comments made at master plan meetings, it seems that Arlington residents do not realize their zoning provides for a change from nonresidential to residential uses by special permit. An oft-heard complaint at public meetings and in interviews was that Arlington should stop “rezoning” commercial land for residential development, but the zoning to allow these kinds of changes in use already exists in Arlington. For example, Arlington encourages single-family homes by allowing them by right in all residential and business districts, and two-family homes by right in most districts, even those ostensibly purposed for business uses.

Since the outset of the Master Plan process, residents have said they favor providing for mixed-use development along portions of Massachusetts Avenue. They say mixed uses promote sustainability and support sound economic development principles, and may support housing affordability. The MPAC’s master plan goals also contemplate mixed-use development in the Business districts, and mixed uses currently occupy several historic buildings in the Industrial and Business districts. Arlington’s zoning does not specifically provide for mixed-use buildings, i.e., with first-floor commercial space and upper-story residential space, but on this point, the ZBL is very unclear. In Section 3.02, the Village Business District (B3) description provides, in part: “Multi-use development is encouraged, such as retail with office or business and residential,” yet multi-use development is not specifically listed as permitted or allowed by special permit in the Table of Use Regulations. However, in Section 5.02, Permitted Uses, the ZBL provides:

A lot or structure located in the R6, R7, B1, B2, B2A, B3, B4, B5, PUD, I, MU, and T districts may contain more than one principal use [emphasis added] as listed in Section 5.04 ‘Table of Use Regulation.’ For the purposes of interpretation of this Bylaw, the use containing the largest floor area shall be deemed the principal use and all other uses shall be classified as accessory uses. In the case of existing commercial uses, the addition or expansion of residential use within the existing building footprint shall not require adherence to setback regulations for residential uses even if the residential use becomes the principal use of the property [emphasis added].

It seems indisputable that at some point in the recent past, town officials contemplated mixed-use activity in the districts listed in Section 5.02. Past plans also promote the inclusion of mixed-use buildings in the commercial centers,³ and comments at the public meetings for this plan indicate that many residents would like to see mixed-use development as well. Still, as one commenter noted, “Everyone wants more great things, but no one wants them near their own house.”

³ See, for example, Larry Koff Associates, *A Vision and Action Plan for Commercial Revitalization* (July 2010).

2. Use Regulations

The Table Use Regulations in Section 5.04 identifies a variety of land uses that are allowed by right or special permit in each zoning district. The land uses fall into the following categories:

- Residential
- Institutional & Educational
- Agricultural
- Public, Recreational and Entertainment
- Utility, Transportation and Communications
- Commercial & Storage
- Personal, Consumer and Business Services
- Eating & Drinking
- Retail
- Office Uses
- Wholesale Business and Storage
- Light Industry
- Accessory Uses

In general, Arlington's Table of Uses is very restrictive. The vast majority of uses are allowed only by special permit (SP) from the Arlington Redevelopment Board (ARB). That Arlington has so many special permit options makes it nearly impossible to develop a plausible forecast of the Town's so-called buildout potential, i.e., the difference between the amount of development that exists now and that which could still be built under existing zoning. At best, one can only identify properties that are good candidates for redevelopment and estimate the maximum amount of space that could be accommodated on site, given coverage, height, parking, and other requirements. The Town should conduct a comprehensive review of these special permits and consider changing them to permitted uses subject to appropriate performance requirements. Special permits have an important place in growth management, but they can also discourage reinvestment.

- **Residential.** These uses include a broad range of residential building types, from single-family detached homes to various multi-family types, dormitories, assisted living

facilities, and hotels. Single-family detached units are allowed in all districts except MU, I, T, and OS, and two-family dwellings are allowed in the same districts except RO and R1 (single-family districts). Allowing single family homes and duplexes in nearly all districts is sometimes referred to as cumulative zoning, which can result in incompatible uses (e.g., single family dwellings in a central business district may not be appropriate). All other residential uses use allowed only allowed by special permit in the other zoning districts, which is highly restrictive.

- **Institutional & Educational.** These uses include community centers and related civic uses, hospitals, schools, daycare facilities, and cemeteries and similar types of uses. All uses in this category are only allowed by special permit in each zoning district except that private schools and institutions are allowed by right in Business Districts B2 through B5. This is highly restrictive.
- **Agricultural.** Agricultural uses include a range of farming (except livestock), sale of garden and agricultural supplies, and greenhouse uses. They are allowed by right in all zoning district as is common in Massachusetts. However, various forms if urban agriculture should be considered by the Town as being appropriate in more urban settings such as the village centers and central business districts.
- **Public, Recreational, and Entertainment.** The uses include a variety of public and civic services as well as recreational uses which are allowed by right in most zoning districts. Other uses such as a post office, private recreational business, construction yards, theaters, and outdoor amusement is only allowed by special permit and is specific districts.
- **Utility, Transportation, and Communications.** These uses include bus, rail, and freight facilities, public and private parking facilities, and telephone utilities. All uses are allowed only by special permit in a limited number of districts except overhead utility poles which are allowed in all districts.
- **Commercial & Storage.** These are auto-related sales and service businesses are restricted by special permit only in B4, PUD and I zoning districts.
- **Personal, Consumer, and Business Services.** These uses include print shops, financial institutions, various personal services, laundry services, consumer service establishments, funeral homes, veterinary clinic. These uses are allowed by right and special permit on in selected business districts as well as the PUD and I districts. Only funeral homes are allowed in residential districts R5-7 by special permit. There are performance standards related to size for financial institutions (2,000 gross sq. ft. requires a special permit) and laundry and consumer services (more than 5 employees requires a special permit in some districts).

- **Eating & Drinking.** This category includes traditional restaurants, fast food establishments, drive-in establishments, and catering services which are allowed by right primarily in the business districts. There are performance standards related to the size of the restaurants requiring a special permit for those bigger than 2,000 gross sq. ft. and on lots greater than 10,000 sq. ft., which is a fairly low standard for a typical restaurant. There are no specific “drinking” establishments identified such as bars, pubs or taverns which apparently are not permitted in town.
- **Retail.** Retail uses have performance standards related to size so that stores of 3,000 gross sq. ft. or more require special permits in business districts B2-B5 under the assumption that they are serving more than just the needs of “the residents of the vicinity”. This is a fairly low size threshold for local businesses that may in fact be serving a primary market of customers in the surrounding neighborhoods.
- **Office Uses.** This categories includes professional, business, medical and technical offices allowed by right and special permit in the higher density residential districts, business districts, and MU, PUD and I districts. General offices also have performance standards related to size requiring special permits for those 3,000 gross sq. ft. or more, which is also a fairly low threshold.
- **Wholesale Business and Storage.** These uses all require special permits and are limited in the B2A, B4, and the industrial district.
- **Light Industry.** These types of uses are mostly allowed by right in the industrial district but restricted by special permit in the B4 district. Only research and development facilities area allowed by right or special permit in a broader high density residential, business and industrial districts.
- **Accessory Uses.** This category includes a diverse range of uses from private garages, home occupations, accessory dwellings, nursery schools, auxiliary retail, and storage. They are allowed by right and special permit in broad range of zoning districts, as appropriate.
- **Mixed Uses.** Mixed-use development is available on a limited basis in Arlington. The only Mixed Use district in town is located on the former Symmes property. (See pages 10-11 of this memo.)

D. DENSITY AND DESIGN

Arlington has adopted a fairly prescriptive, traditional approach to regulating the amount of development that can occur on a lot (or adjoining lots in common ownership). The Town’s basic dimensional requirements cover several pages in the Zoning Bylaw, including some twenty footnotes that either explain or provide exceptions (or both) to the Table of Dimensional and Density regulations. In addition to minimum lot area requirements, Arlington regulates **floor area ratios**, lot coverage, front, side, and rear yards,

building height, and minimum open space. In most districts, the maximum building height is 35 feet and 2 ½ stories – traditional height limits for single-family and two-family homes but challenging for commercial buildings – yet apartment buildings in some of the business-zoned areas can be as tall as 60 or 75 feet, and possibly higher with an Environmental Design Review (EDR) special permit from the ARB (Section 11.06 of the bylaw).⁴

The Zoning Bylaw lacks requirements such as building placement on a lot and building orientation, or tools that could help to regulate form in a coherent way, and in a way that comports with Arlington’s historic development patterns. Due to the prevalence of one-parcel districts along Massachusetts Avenue, the Town essentially requires variable building setbacks from lot to lot, though most of these properties have some zoning protection for pre-existing conditions. Still, a project involving parcel assembly and new construction would have to comply with Arlington’s zoning, and it is not clear that the result would be harmonious with adjacent uses.

1. Residential Districts

- **Lot Requirements.** The Minimum Lot Size for residential uses ranges from 5,000 to 9,000 and appears to be consistent with the prevailing development patterns in the various neighborhoods and underlying zoning districts. Large lots sizes are required for multi-family buildings as expected. The Minimum Frontage requirements are also generally consistent with prevailing development patterns in the neighborhoods and underlying zoning districts. One exception is that Town House structures require 20,000 square feet (sq. ft.) and 100 feet of frontage. This is inconsistent with typical townhouses which are attached single family homes on separate lots. They typically have frontage widths of 16 to 30 feet and lot sizes as small as 2,000 square feet. The standards revised to reflect this building form and a limit should be placed on the number of attached townhouses that are permitted without a break (such as 9 to 12).
- **Intensity of Development.** These standards including Maximum Floor Area Ratio (FAR), Lot Coverage Maximum Percent, and Minimum Lot Area/D.U. appear to be reasonable and consistent with prevailing development patterns in the neighborhoods and underlying zoning districts. One exception is that townhouses typically have higher FARs than 0.75. These building forms should be considered separately from apartment houses and office structures in the dimensional requirements.
- **Minimum Yards.** The Front, Side, and Rear setback requirements appear to be consistent with the prevailing development patterns in the neighborhoods and underlying zoning districts.

⁴ The Planning Department notes that since cellars do not count toward the calculation of maximum building height, they can effectively cause structures to be taller than 35 feet.

- **Building Height Maximum.** The maximum height and stories, typically 35 feet and 2 stories in the lower intensity residential districts and 40 feet and 3 stories in the higher density districts, appear to be consistent with prevailing development patterns in the neighborhoods and commercial corridors. However, if Arlington wants to provide for a broader range of housing types, taller buildings and a reduction in square feet per dwelling unit may be necessary in selected areas. These kinds of incentives can be augmented with an increase in the percentage of usable open space on a site with access to the surrounding area.
- **Open Space Minimum Percentage of Gross Floor Area.** Required Landscaped and Usable open space appears to be consistent with the prevailing development patterns in the neighborhoods and underlying zoning districts.

2. Business Districts

- **Lot Requirements.** The Minimum Lot Size and Minimum Frontage are reasonable and consistent with prevailing development patterns and context of the different districts. For example, no minimum lot size and 50 feet of frontage for most uses in the village centers is a context-based dimensional standard.
- **Intensity of Development.** The Floor Area Ratio range of 1.0 to 1.4 are reasonable and can potentially be adjusted with a special permit. Lot coverage is not applicable for the most part as it should be. The minimum lot area per dwelling unit may be a deterrent to mixed use development and unnecessary in areas such as the village center. The amount of area needed for commercial lots will always be driven by the amount of parking either required on site or actually needed. Adding artificial standards that increase lot size without a particular benefit to the inhabitants is not advised. The requirements for landscaped and usable open space are more of a factor in mixed use and attracting residents to live in village centers.
- **Minimum Yards.** The minimum front, side and rear yard requirements coupled with the landscaping and screening standards where necessary appear to be consistent with existing development in the various business districts. For example, in the B3 and B5 districts which cover the vast majority of land in the village centers, there are no front or side setback requirements, which allows buildings to be placed at the edge of the sidewalk, thereby maximizing the pedestrian environment. However, this does not guarantee that buildings be close to the street. They could be set back, diminishing walkability and street activation, because the Town does not have building placement and occupation standards in areas that cater to pedestrians, e.g., Arlington Center, Arlington Heights, and East Arlington.
- **Building Height Maximum.** The maximum number of stories and height appears to be consistent and provide incentives for new infill development in the various business districts. However, in certain areas where 2 or 3 stories are typical, a building of 5

stories and 60 feet may appear out of context and scale with the surrounding area. This type of impact could be mitigated with additional setback or building step backs, or a combination of thereof.

- **Open Space Minimum Percentage of Gross Floor Area.** These requirements appear reasonable but may need to be more specific in certain districts. Landscaping in most business districts should be primarily focus on streetscape enhancements (street trees, planters, and hardscapes such as plazas and seating areas), shading of parking lots, and screening from abutting uses where necessary. Usable open space in the village centers is critical. This can take place on individual lots (such as dining terraces, forecourts, etc.) and collective spaces such as plazas, commons, greens, and pocket parks. These usable open spaces are a significant draw to the districts and can be publically owned or privately owned with property owners in the district contributing to their establishment and maintenance in lieu of on-site requirements.

3. MU, PUD, I, T and OS Districts

- Requirements for lot size, yards, building heights, intensity of development, and open space in the MU, PUD, I and T districts are fairly minimal and flexible, providing additional incentives for redevelopment. Regulations for the Open Space district (OS) are very strict, for this district includes public parks, conservation lands, and open spaces.

4. Other Requirements

Arlington's **Environmental Design Review (EDR)** process blends an enhanced form of **site plan review** with authority for the ARB to grant special permits for almost all uses that require special permit approval in the Table of Uses. This includes a wide variety of use classes and types of activity. For example, the Town requires an EDR special permit for any construction or alteration of buildings regardless of use along Massachusetts Avenue, Pleasant Street, Mystic and Medford Streets, and Broadway – Arlington's historic main roadways – as well as residential development of six or more single-family or two-family units on one or more contiguous parcels, all multi-family housing, and all nonresidential uses that exceed specified floor area thresholds. The ARB conducts design review as part of the EDR process under Section 11.06, but the Town has not formally adopted design guidelines for the commercial areas. It would be difficult for property owners and developers to know what the Town actually wants and to plan their projects accordingly.

Off-Street Parking. Arlington requires all land uses to provide off-street parking. In many ways, the Town's off-street parking requirements are quite thoughtful. For example, requirements such as one space per 300 sq. ft. of retail development and one space per 500 sq. ft. of office development are fairly reasonable compared with the rules that apply in many towns. Arlington also provides for off-street parking on premises other than the lot served (i.e., off-site parking), if the permitting authority finds that it is impractical to construct the required parking on the same lot and the property owners have a long-term

agreement to secure the parking. In addition, Arlington allows substitution of public parking in lieu of off-street parking if the public lot is within 1,000 feet of the proposed use. Consistent with the purpose statement of Section 8.01 (Off-Street Parking and Loading Regulations), Arlington prohibits front yard parking in residential areas in order to promote aesthetically pleasing neighborhoods, preserve property values, and avoid undue congestion. Arlington has adopted bicycle parking requirements for lots with eight or more vehicular parking spaces, too.

Despite (or perhaps because of) the Town's generally reasonable parking standards, complaints about inadequate parking abound in Arlington. Property owners and merchants say the situation in East Arlington is most troublesome and that the area's development potential is capped by the lack of parking. Meanwhile, residents complain that the two-hour parking limits in East Arlington are enforced only in the business districts, not in the adjacent residential neighborhoods. Moreover, Arlington does not have an abundance of on-street or public parking, so the seemingly flexible provisions of the Zoning Bylaw may not have much practical benefit. Even in districts where maximum height limits would not impede redevelopment, the off-street parking regulations could do just that – making parking regulations a form of dimensional and density control. Parking supply management is not a land use issue per se, but it has an undeniable impact on the public's receptivity to more intensive development – which in turn has an impact on a special permit granting authority's approach to development review and permitting.

5. Nonconforming Uses and Structures

Arlington's zoning seems remarkably clear about **nonconforming uses**: they cannot be extended (increased). While the Town gives the Board of Appeals some latitude to approve a change of one nonconforming use to another nonconforming use that is reasonably similar, the overall message of the Zoning Bylaw is that nonconformities should be eliminated over time. As for nonconforming structures, the Board of Appeals has authority to extensions or alterations that do not create new nonconformities or cause existing nonconformities to become more nonconforming. Still, according to the Planning Department, the Town has given "wide latitude" to nonconforming structures, sometimes granting them greater expansion than conforming structures.

Under both state law and the Town's zoning, the standards for expanding or altering nonconforming single-family and two-family homes are less demanding (and more discretionary) than for other land uses. Single-family and two-family homes may be altered and extended if a proposed project does not create new nonconformities and the Board of Appeals finds that the project will not be more detrimental to the neighborhood than the existing condition. (Substantial changes to nonconforming structures may also trigger Arlington's demolition delay bylaw.)

Arlington's zoning does not allow use variances.

6. Transfer of Development Rights

Arlington's ZBL is noteworthy for its omission of a Transfer of Development Rights (TDR) feature. TDR needs thoughtful consideration in Arlington because the Town has so few remaining parcels of vacant land, and some of that land has significant value both for open space and environmental resource protection. TDR requires a "stand-alone" section in zoning in order to address use, dimensional, open space, and procedural requirements in a coherent way. It also needs organizational capacity, e.g., an entity that can acquire and "land bank" real estate in order to facilitate transfers of development rights in a timeframe that works for property owners. TDR could be a very important tool for protecting in perpetuity lands that should be saved while acknowledging and protecting valid economic expectations of owners and investors.

7. Potential Conflicts with State Law

Arlington's present zoning is sometimes inconsistent with Chapter 40A and case law. The following examples need to be addressed:

- The Town requires a special permit for churches and other religious uses, day care and kindergarten programs, and public and private non-profit schools, yet G.L. c. 40A, § 3 categorically exempts these uses from local control, other than "reasonable" dimensional regulations. Libraries, which usually qualify as an educational use, also require a special permit in Arlington. Ironically, non-exempt schools such as trade schools conducted as a private business are allowed as of right in Arlington's business districts, yet public and non-profit schools require a special permit.
- "Rehabilitation residence," which Arlington defines as a "group residence" licensed or operated by the state, requires a special permit, but G.L. c. 40A, § 3 specifically forbids imposing special permit requirements on housing for people with disabilities. (Moreover, most if not all group homes also qualify for exemption as an educational use.)
- Arlington's approach to regulating farms does not square with state law, which protects farming in all of its varieties (including agriculture, horticulture, and permaculture) on five or more acres of land or two or more acres if the farm is producing a modest amount of income for the owner. As a practical matter, Arlington's compliance or lack thereof with the state's agricultural protections may be a moot point because the Town does not have five-acre parcels in agricultural use. Nevertheless, the bylaw's attempt to block livestock or poultry even on larger parcels is incompatible with state law.